



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

CRS
Docket No: 6329-02
19 December 2002

[REDACTED]

[REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 11 December 2002. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 14 February 2000. The record reflects that on 27 April 2001 you received nonjudicial punishment for use of ecstasy.

On 11 June 2001 the commanding officer recommended that you be separated with an other than honorable discharge by reason of misconduct due to drug abuse. When informed of the recommendation, you elected to waive the right to present your case to an administrative discharge board. After review by the discharge authority, the recommendation for separation was approved and on 15 June 2001 you were discharged with an other than honorable discharge.

The Board considered two advisory opinions furnished by the Navy Environmental Health Center dated 15 March and 18 September 2002, copies of which are attached. The opinions state, in effect, that no service members were victimized by false positive urinalyses for ecstasy. Further, there is no doubt that your urine sample tested positive for Ecstasy.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity and the contention that you should be reinstated since your positive urinalysis for ecstasy was flawed, based on a newspaper article on Navy drug testing. However, the Board concluded that these factors were not sufficient to warrant reinstatement, given your use of drugs. Additionally, the Board concurred with the two advisory opinions. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
NAVY ENVIRONMENTAL HEALTH CENTER
620 JOHN PAUL JONES CIRCLE SUITE 1100
PORTSMOUTH VA 23708-2103

5350
Ser CS-DL/00191
15 Mar 02

From: Commanding Officer, Navy Environmental Health Center
To: Chief, Bureau of Medicine and Surgery, (MED-00P)

Subj: RESPONSE TO NEWS ARTICLE CONCERNING NAVY ECSTASY TESTING

Ref: (a) Baltimore Sun news article by Ariel Sabar of 14 Mar 02

1. A clarification of the information described in reference (a) is provided. The news article described problems with a new screening test for the drug Ecstasy in the Navy Drug Testing Program. This information is correct however, leaves the impression that the Navy falsely identified sailors as drug positive. In no uncertain terms, were service members incorrectly reported positive for the use of Ecstasy or methamphetamine.

2. The Department of Defense (DoD) Drug Testing Program including the Navy Drug Testing Program is structured to ensure that a minimum of three separate tests are conducted on a urine sample before reported back to the command as positive for an identified drug. The first and second tests are screening tests to separate negative samples from presumptive positive samples. All presumptive positive samples are then further analyzed to confirm the presence of the drug through an extensive chemical extraction and analysis using gas chromatography/mass spectrometry (GC/MS). The GC/MS analysis provides a unique, identifying chemical "fingerprint" of the drug in question and is recognized in the forensic toxicology and legal communities as the "gold standard" for the identification of drugs of abuse in urine drug testing programs.

3. The Navy and the screening reagent company, Microgenics, have actively been involved to share data and to ensure that all testing was performed according to their recommended specifications. Since January 02, the Navy and Microgenics have cooperated to explore alternate screening test reagents which have an increased sensitivity for the drug Ecstasy without identifying common over-the-counter cold medications. A solution is thought to be near and could be in the testing laboratories within several months. In the meantime, DoD and the Navy continues to use the amphetamine-class screening kit that has been in use for the past five years which does identify Ecstasy but requires more of the drug to be present in the urine to respond as a screened positive.

4. The points of contact are [REDACTED] MSC, USN, Navy Drug Testing Program Manager at commercial (757) 953-0750, email address [REDACTED]@nehc.med.navy.mil or [REDACTED] Deputy Navy Drug Testing Program Manager at commercial (757) 953-0751, email address bairdc@nehc.med.navy.mil.



Enclosure (3)



DEPARTMENT OF THE NAVY
NAVY ENVIRONMENTAL HEALTH CENTER
620 JOHN PAUL JONES CIRCLE SUITE 1100
PORTSMOUTH VA 23708-2103

5355

Ser CS-DL/
18 SEP 2002

C1282

From: Commanding Officer, Navy Environmental Health Center
To: Chairman, Board for Correction of Naval Records, 2 Navy Annex, Washington, DC
20370-5100

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF [REDACTED]

Ref: (a) BCNR ltr AEG;jdh Docket No. 06329-02 of 27 Aug 02

Encl: (1) NDSL Jacksonville ltr 5355 Ser 700:07/1140 of 10 Sep 02
(2) BCNR File
(3) NEHC ltr 5350 Ser CS-DL/00191 of 15 Mar 02

1. Upon receipt of reference (a), the Deputy, Navy Drug Testing Program Manager requested that an administrative and technical review of the forensic test data and results for the specimen with laboratory accession number (LAN) J0104062167 be conducted by a certifying official at the Navy Drug Screening Laboratory, Jacksonville (NDSL JX) where the member's sample was tested. A summary of that review is provided as enclosure (1).

2. A thorough review of enclosures (1) and (2) was conducted and the following comments are provided:

a. The urine specimen (SSN 592-48-9398) collected on 31 Mar 01, was received on 05 Apr 01 at NDSL JX and assigned LAN J0104062167. A portion of the specimen was poured for the initial screening test and on 06 Apr 01, the specimen tested presumptive positive by immunoassay (IA) for the amphetamine class of drugs. A second portion of the specimen was poured for a second screening test and on 09 Apr 01, the specimen again tested presumptive positive by IA for the amphetamine class of drugs. A third portion of the specimen was poured for a gas chromatography/mass spectrometry (GC/MS) test to determine the presence or absence of amphetamine, methamphetamine, or designer amphetamines (MDA, MDMA, and MDEA) in the specimen. The GC/MS analysis on 10 Apr 01, identified the presence of MDMA (methylenedioxymethamphetamine). A fourth portion of the specimen was poured for a GC/MS confirmation test to determine the level of MDMA in the specimen. The GC/MS analysis on 13 Apr 01, determined that MDMA was present in the specimen at a concentration of 3,336 ng/mL. This level is above the DoD administrative cutoff of 500 ng/mL for MDMA and was, therefore, reported as positive for MDMA to the submitting unit on 17 Apr 01. The four tests (2-IA and 2-GC/MS) met all acceptance criteria for quality control samples and identification of a positive specimen by DoD standards.

Subj: COMMENTS AND RECOMMENDATION IN THE CASE OF [REDACTED]

b. Enclosure (3) is provided to clarify the newspaper article from the Baltimore Sun, which is included in enclosure (2). During the month of January 2002, the Navy Drug Testing Program began using a new screening test that was reported to be more sensitive to the designer amphetamines (i.e., MDA, MDMA, and MDEA). In other words, the new test would allow better detection of these designer drugs during the initial screening process. The new test was better able to detect the designer amphetamines but it also detected many legal, over-the-counter, amphetamine-like medications. The Navy labs quickly determined that the new test could not be efficiently utilized for detection of designer amphetamines because too many samples were being initially identified as presumptive positive for amphetamines. When these presumptive positive samples were tested by GC/MS, they were negative for amphetamine, methamphetamine, MDA, MDMA, and MDEA. The Navy Drug Testing Program requires samples to be tested by a confirmatory method, such as GC/MS, prior to releasing any positive result. A specimen is not reported positive on the basis of a positive screening test alone. All positive urinalysis results were correctly reported.

c. A specimen will not test positive for MDMA by GC/MS due to the ingestion of ephedrine or ephedrine containing diet pills called "Yellow Jackets" (as referenced in enclosure (2)) or any other legal, over-the-counter or prescription medication. A positive report for MDMA will only result from the illegal use of the designer amphetamine, MDMA, (also known as "Ecstasy").

3. There is no doubt that the urine sample, which was tested at NDSL JX as LAN J010462167, contained MDMA at the level reported by NDSL JX in the Naval message with Date-Time Group 171924Z APR01. Correction of the ex-service member's record is not recommended as it pertains to the positive urinalysis result.

4. Please contact [REDACTED], Navy Drug Testing Program Manager at (757) 953-0750, [REDACTED] Deputy Navy Drug Testing Program Manager at (757) 953-0751 if you have additional questions concerning this matter.

[REDACTED]
[REDACTED]
By direction